

Professional Cards

LAWYERS

RAMAGE & SMITH,
Attorneys-at-Law,
Rooms 27 and 28, Trust Building,
S. F. Ramage, Ira L. Smith.
Cons. Phone, 551.

HOWARD N. OGDEN, M. W. OGDEN,
Attorneys-at-Law,
101 Hall Block, Main street. Con-
solidated phone, No. 37.

JOHN L. LEHMAN,
LAWYER,
FAIRMONT, W. Va.
Office, Hall Block.

C. H. LEEDS,
Attorney-at-Law,
FAIRMONT, W. Va.
Office, Opposite Court-house.

A. L. LEHMAN,
Attorney-at-Law,
FAIRMONT, W. Va.
Office, Hall Block.

W. S. MEREDITH,
Attorney-at-Law,
FAIRMONT, W. Va.
Office, Hall Block.

HARRY SHAW,
Lawyer,
COURT-HOUSE,
FAIRMONT, W. Va.

T. N. PARKS,
Attorney-at-Law,
FAIRMONT, W. Va.
Office Main St., Opposite Court-house.

A. S. FLEMING,
Attorney-at-Law,
FAIRMONT, W. Va.
Office, 202 Main Street.

E. F. HARTLEY,
Attorney-at-Law,
FAIRMONT, W. Va.
Office, First National Bank Building.

JAS. A. MEREDITH,
Attorney at Law,
FAIRMONT TRUST CO. BLDG.,
FAIRMONT, W. Va.

PHYSICIANS

DRS. HOWARD AND CARR,
Cor. Main Street and Parks Avenue
Front Rooms, 2d Floor.
Office Hours—10-11 a. m.; 2-4 p. m.;
7-8 p. m.

H. R. JOHNSON, M. D.,
Practice Limited to the Eye, Ear, Nose
and Throat.
FAIRMONT, W. Va.
Office, 225, People's Bank.

JOHN R. COOK, M. D.,
FAIRMONT, W. Va.
Office at Hospital.

DR. D. L. L. YOST,
Residence, new building, Fairmont
Avenue.

F. W. HILL, M. D.,
Office hours: — Woman's Hospital
Quincy and Jackson streets, 1 to 2
and 5 to 7 p. m.; Rooms 206 and 107
Jacobs Building, Monroe street, 2 to 5
and 7 to 9 p. m.

DR. V. A. SELBY,
FAIRMONT, W. Va.
Office Opposite Court-house.

W. C. & JESSE A. JAMISON,
Physicians and Surgeons,
MADISON STREET,
FAIRMONT, W. Va.

DR. LEE LEMASTERS,
Osteopathic Physician,
Office Rooms, 208 and 209, Jacob
Building, Monroe Street. Bell
Phone, 1971.

DENTISTS

DR. A. R. BADGLEY,
Dentist,
Vitalized Air Given With Extraction
If Desired. Prices Reasonable. All
Work Guaranteed.

DR. J. O. McNEELY,
Dentist,
Main Street,
FAIRMONT, W. Va.

JUDGE HOLT'S DECISION SUSTAINING
INJUNCTION IN RANDOLPH TAX CASEAn Important and
Able Opinion

ELKINS, Dec. 1.—The bill in this cause was filed by Howard Sutherland on behalf of himself and all other citizens of Randolph county similarly interested, for the purpose of having the county levy made by the County Court of Randolph county at its fiscal term in July of this year declared illegal and void, and the sheriff of the county inhibited and enjoined from collecting taxes provided for these under. The commissioners of the County Court and the sheriff are made parties defendant thereto.

The bill charges that the valuation of taxable property in Randolph county is \$21,584,000; that the amount necessary to be levied by the County Court for the current fiscal year to cover all debts and liabilities payable during such year including all expenditures for county purposes as shown by the estimate made and entered of record by the County Court is \$35,000 and that the County Court at its levy term for the year 1906, levied a tax of twenty cents for county purposes on the said amount of taxable property in the county; that before levying such tax the County Court made up an estimate of the amount necessary to be levied for the fiscal year beginning on the first day of June, 1906, to cover all liabilities payable during such year and set forth the estimate as follows:

For claims allowed at that term	\$7,800 00
For members County Court	200 00
For jurors	2,500 00
For roads and bridges	2,500 00
For poor house	1,000 00
For medical attention to the poor	800 00
For printing and stationery	1,000 00
For incidental expenses	1,000 00
For criminal charges	3,500 00
For new Court-house	10,000 00
For sheriff's commission	3,000 00
For delinquent list	1,800 00
Total	\$35,100 00

That this estimate, the bill avers is all that the County Court can levy for and that a levy that raises more than that \$35,000 taxes for county purposes is illegal and therefore null and void; that a levy of twenty cents on every one hundred dollars would raise a sum greatly in excess of \$35,000 or \$42,578 and that sixteen and one-half cents on every hundred of valuation is and was at the time the said levy was laid sufficient to raise the said sum of \$35,100 and pay all liabilities of the said county for the said current fiscal year. The bill also charges that the amount of the estimate of \$35,000 is all that the County Court can levy for.

Then the bill also sets up that the said levy the county exceeds the amount of the levy of 1906. With 7 per cent added.

However by admissions and exhibits filed and arguments by counsel this in the bill is eliminated as thereby it is shown that the levy complained of does not so exceed the levy for 1904.

The County Court answers and denies the allegations of the bill as to the illegality of the levy but admits that the County Court did levy for an amount equal to \$7,351.97 in excess of the estimate made by the court of the liabilities necessary expenses of county services for the fiscal year.

So that by the record and the agreements and by admissions of the parties, this controversy is narrowed to the one proposition of law, viz: Can the County Court fix a levy upon the taxable property of the county for county purposes which exceeds in the aggregate more than the aggregate of the estimates made by said court of the amounts necessary to be levied for the current fiscal year to cover all county debts and liabilities payable during each year, including the probable expenditure for county purposes, the amount outstanding, etc., as provided by law? In other words does Chapter 48 of the acts of the Legislature, 1905, limit the County Court in the aggregate amount of its levy to the amount of its estimate? In construing this statute, we must look first to the purpose the legislature had in enacting it, as it simply to regulate the method by which the County Court was to lay their levies, or was it intended to limit the tax levying body in the amount of taxes they had a right to place upon the taxpayer and to specify the purpose for which the money was to be raised? I think it was undoubtedly the intention of the Legislature to limit the County Courts to definite and certain purposes.

The circumstances which brought about this enactment are fresh in our minds, and all have the right to recall the public debates that took place in the Legislature and elsewhere at the time of its passage which are to the effect that the purpose of the Legislature was to limit the County Court as well as other tax assessing powers so as to prevent them from laying excessive or unnecessary burdens upon the tax payers. Thereupon, in order to restrain the tendency to overtax

the people, the act requires that an estimate shall be made of the necessary liabilities of the county for the fiscal year and then this estimate shall be put on its record. And then the court shall thereupon levy so many cents on every one hundred dollars of the valuation of the property taxable in the county as will cover the estimated amount, etc.

And as if for fear that the court might put items that was not necessary expense, it still again limited the levy in the aggregate to 7 per cent. In addition to the levy of 1904 above and beyond which the court could in no case go.

This they did by a special provision showing that the legislature clearly intended to limit the levy in the first instance to the items of the estimate and then, to make this limitation more emphatic, they made the special proviso as to the 7 per cent.

Is not the intention of the Legislature clearly indicated by the language of the act itself? It is that the court shall, after making and recording the estimate lay so many cents upon every hundred dollars of property, taxable, in the county as will cover this estimate. What estimate? Manifestly the one made and recorded. Not some other estimate in the mind or breast of members of the court or spectators who are hanging about the Court-house to get the county orders issued to the citizens. Not some estimate to be conjured up in the minds of some designing person hereafter. Not an estimate based upon some unforeseen calamity which may never come. This statute does not intend to make pessimists out of the County Court who are always to be looking for floods or earth quakes or pestilence. But they are to make a reasonable, practical estimate like any other set of reasonable business men do who are engaged in conducting their own private or corporate business based upon the reasonable and ordinary experience of practical human affairs.

And then lay a levy sufficient to cover these liabilities. But what is meant by cover? Does it not reasonably mean, in this instance, sufficient to pay these charges so estimated? Then does not this act limit the court to the payment of this estimate and no more? If it had meant more, could it not easily have said more? Could it not have easily said "to cover this estimate and such other charges as the court may see fit to assume?" But is it not plainly apparent that such a provision in such long range would have destroyed the very purpose the legislature had in view, viz, the limiting of the taxing power to a levy sufficient only to pay the items of the estimate?

Is This Law Mandatory?

If I am right as to the purpose of the legislature in enacting these provisions, then the very fact that the legislature intended to limit the County Court made the law mandatory.

But the making of this estimate is a condition precedent to laying the levy, for the statute provides that after the court approves this estimate, it shall be entered of record in the Record Book and then the County Court shall levy so many cents on the one hundred dollars as will cover or pay the estimated amounts. No other amounts. It will be seen therefore that the levy cannot be made until this estimate is made and put on record. It seems to me that he would be a "bold knight" of the law of the free lance" who would pretend that this estimate was not necessary to the levy. Why estimate at all if the amount is not to govern the amount of the levy? Why not levy for the amounts they may in their minds conjecture will be needed. Needed for what? It seems to me too plain for question that the legislature intended to limit the County Court to their estimate in laying the levy and then, if this is true, the whole statute must be construed to be mandatory and, if mandatory, then the "estimate" is the limit. Anything further is unwarranted and illegal. It has been argued in this case that the sum of \$7,000 or \$8,000 was so insignificant an amount that it ought not be considered. But, if the County Court can lay a levy for \$8,000 that is unwarranted, why not for \$80,000? I cannot think that this position is sound but on the other hand I must hold that the estimated items must be regarded as the limit and any excess of that amount is illegal. Why should the tax-payers of this county be required to pay in the hands of the sheriff for the use of the County Court \$8,000 for which they do not show they have any use, any public use? I hold that under this statute as well as under the general law authorizing taxation, the County Court has no right to take one dollar from the people that it not absolutely necessary to conduct its government. What does the County Court propose to do with this extra amount in the levy? Who are they going to pay it to? They don't show that anybody is entitled to it. They admit by their own order that they don't owe it to anyone and the record as made up in this case, declares that the court is prohibited, by an injunction from the court, from paying it out on out-standing county orders. Is not this alone sufficient to show the wisdom of the statute in question if its wisdom was in any

wise questioned, as well as the necessity for such a law? So I am constrained to hold as much as I regret to do so, because I always hesitate to declare the acts of any legal tribunal void, knowing as I do that I must recognize the law to be in their power to begin with. That is the presumption is that any tribunal has done its duty and I do not hold to the idea suggested by counsel in argument that this is a violent presumption as any tribunal under the law is entitled to such a presumption—that the levy of the County Court made at its fiscal meeting, is entitled to the prayer of this bill and the injunction herein awarded as perpetuated with costs.

The court regards it as rather unfortunate that it was compelled to decide this important case, the questions all being comparatively new, without the advantage of seeing and reading the opinion of the Supreme Court lately rendered in the case of the "Tax Commissioner against the County Court of Braxton county, etc." involving largely the same questions and the construction of this statute, or without being able to consult any authorities in relation to it, the counsel engaged not citing any, one side stating that there was no authority to be had and the other side claiming to have authority but providing none and the court not having any book at hand or access to any, has been compelled to "go it alone."

But owing to the importance of this case to the people and local authorities, I have thought best to end it at once so that the County Court could reconvene and lay the levy so as to conform to the law which can now be easily done without any unnecessary delay and thus enact a proper levy before the time expires for the tax-payers to get the 2½ per cent discount provided by law.

Since preparing the foregoing opinion, my attention has been called to Sections 3 and 4 of Chapter 16 of Acts of 1904, which are as follows:

Sec. 3. It shall be unlawful for any County Court or board of education to expend any money or to incur any obligation or indebtedness, not expressly authorized by law, to be paid or incurred by such body. Nor shall such County Court or board of education make any contracts express or implied, the performance of which, in whole or in part, would involve the expenditure of money in excess of funds legally at the disposal of such County Court or board of education as the case may be.

Sec. 4. Any such officer or person who, in violation of any of the provisions of this act, shall expend any sum or amount of money, incur any debt or obligation or make or participate in the making of any such contract, or shall be party to any such in any official capacity, shall be personally liable therefor both jointly and severally, and an action may be maintained therefor by the State, county district, or any person prejudiced thereby in any court of competent jurisdiction. And there shall be no liability upon the State, county, or district or the funds thereof on account of any such debt, obligation or contract.

These sections clearly prevent, if they do anything, the expenditure of any money that is not authorized by the law; and before the expenditure is authorized by law, an "estimate" must be made by the County Court of the funds necessary to pay the expenses of the county government for the current fiscal year. And any items not considered and put into this "estimate" are not to be considered as necessary expenses for the current fiscal year, and cannot therefore be legally levied for. And any levy made for any purpose which is not included in the "estimate" is illegal, not being "expressly authorized by law." So that, taking all the exactment of law together upon the subject under discussion, they would seem to clearly show the intention of the legislature to limit the expenditures of the public money to the actual necessities of the county government, and so intent was the legislature in protecting the people to the extent of allowing them to keep their money in their own pockets, that it has visited a personal liability upon the members of any County Court who imprudently or mistakenly takes their money from them and places it in the county treasury or the coffers of the County Court.

KEEP YOUR HEAD UNCOVERED.

The Constant Wearing of a Hat Propagates Dandruff Germs.

There are many men who wear their hats practically all the time when awake and are blessed with a heavy shock of hair; yet if the scalps of these same men become infested with dandruff germs, the parasites would multiply the quicker for lack of air. Baldness would ensue as the final result. Newbro's Herpicide kills these germs at stimulates healthy hair to abundant growth. Herpicide is a pleasant hair dressing as well as a dandruff cure and contains not a atom of injurious substance. Sold by leading druggists. Send 10c in stamps for sample to The Herpicide Co., Detroit, Mich.

E. A. Billingslea & Co., special agents.

"I have called, ma'am," said the man at the front door, "to ask if you can't contribute something to the Infants' Home."

"I am already contributing 19 hours a day to an infant's home of my own," she interrupted, closing the door. — Chicago Tribune.

Fish and oysters at Robb's.

ANDERSON'S BON TON

Hats, are stylish
and cheap

See the new Panama Skirts we sell for \$4.50, in black, brown and navy.

See our line of Silks, new and up-to-date. Our special Yarmoth Silk at 85c beats them all for \$1.00 a yard.

Plenty of pretty Coats and Caps for the children.

ART EMBROIDERY

There's no discounting the beauty of hand embroidery work. Done to order on dollies, centerpieces, shirt waists and children's clothes. See M. S. WILLIAMS, for plain sewing. Rear of No. 418, Fairmont Ave.

HILL BROS., Dentists.



See Our
Prices for
First Class

PAINLESS DENTAL WORK.

All Work Guaranteed. Lady Attendant.

Full Set of Teeth \$5.00 up
Gold Crowns, 22k \$5.00
Extracting 25c, without pain. 50c
"Bridge Work" \$4.00
Fine Gold Fillings \$1.00 up
White Fillings 50c

Over Postoffice, Fairmont.

STOP A MOMENT!



Don't rush madly through this life without a little thought about

INSURANCE.

Each man owes it to himself and those dependent on him to provide against contingencies. The ravages of fire, the horror of an accident, may shut off the present means of living. An insurance policy at this time would be a comforter in the time of trouble, etc.

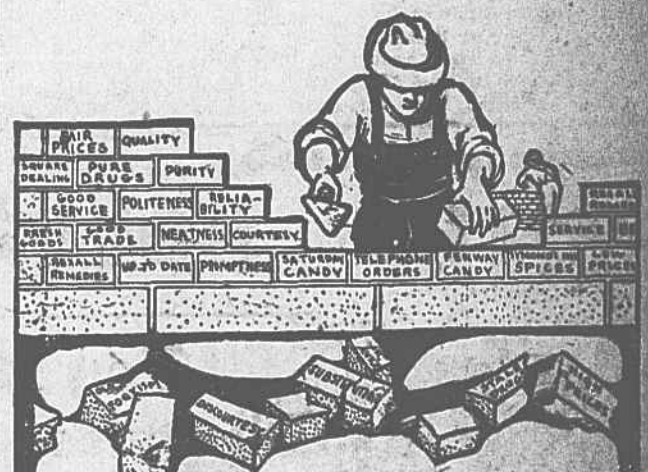
315 MAIN STREET

Francis E. Nichols

SAML. B. HOLBERT. EDW. F. HOLBERT.

HOLBERT BROTHERS,
The Leading General Insurance
UNDERWRITERS

COBS BUILDING, FAIRMONT, W. VA.

The Building of a Drug Business.
Square Dealing.

Why is it that this store deserves and wins your preference? Here is the answer in a nutshell. Because we give you a square deal in everything you buy—because we look at Drug Store keeping from your standpoint. You find that out every time you trade here. We believe in doing things a little bit better than ordinary, and it is by doing things a little bit better than ordinary that our business building is accomplished. There's a difference between the ordinary and better-than-ordinary store, just as there is a difference between the "cheap" drug store and the "fair priced" drug store. The "cheap" store or the "ordinary" store is a dangerous store to patronize, especially if it is a drug store. Your doctor knows that, and your doctor also knows that this store is a lot better than the ordinary drug store—that it is reliable—that we will sell only drugs and medicines that are pure and fresh, and at the same time we sell everything at a fair price.

MT. CITY DRUG CO.

There's a
Difference
in
Men's Clothes

We have the "different kind—the nifty kind—the kind the tailors copy.

Just Satisfy Yourself
Look us over
Try on a few Garments
It is a pleasure to show such
Clothing



We are the exclusive agents in
this city of

HOWARD HATS and
STACY-ADAMS SHOES

None Better Made---Try Them

SAM B. ISEMAN
Head to Foot Outfitters

DR. H. B. BARTHOLOW,
Veterinary Surgeon and Dentist.

All Calls Promptly Answered

Office and Hospital, Morganton and Fairmont, W. Va.
Both Phones CALL

DR. FAHRNEY'S TEETHING SYRUP

Is the only Teething Syrup that we make. We do not make any Teething Syrup under another name. We do not make Teething Syrup in Germany or in any other country. There is no other Teething Syrup made like ours, or as good as ours, or "about the same" as ours. There is a vital difference. Write to Dr. H. B. Fahrney & Co., Hagerstown, Md., (mention this paper) for FREE Trial Bottle by mail. Price, 25c. at drug stores. ALWAYS BUY THE GENUINE

